

## Department of Health and Human Services

## § 33.4

*Hearing* means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, the Secretary may provide an oral hearing.

*Hearing official* means a Departmental Appeals Board administrative law judge or appropriate alternate as outlined in § 33.7(a)(2).

*Paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

*Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 owed by a federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

*Secretary* means the Secretary of Health and Human Services, or the Secretary's designee within any Staff Division, Operating Division or Regional Office.

*Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to this Department or another agency as required or permitted by 5 U.S.C. 5584, 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

### § 33.3 General rule.

(a) Whenever a delinquent debt is owed to the Department by an employee, the Secretary may, subject to paragraphs (b) through (d) of this section, involuntarily offset the amount of the debt from the employee's disposable pay.

(b) Unless provided by another statute pertaining to a particular type of debt (e.g., 42 U.S.C. 292r, Health professionals education, 42 U.S.C. 297b, Nurse education), the Department may not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were

charged with the responsibility to discover and collect such debts.

(c) Except as provided in paragraph (d) of this section, prior to initiating collection through salary offset under this part, the Secretary must first provide the employee with the following:

(1) Written notice of intent to offset as described in § 33.4; and

(2) An opportunity to petition for a hearing, and, if a hearing is provided, to receive a written decision from the hearing official within 60 days on the following issues:

(i) The determination of the Department concerning the existence or amount of the debt; and

(ii) The repayment schedule, unless it was established by written agreement between the employee and Department.

(d) The provisions of paragraph (c) of this section do not apply to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deduction from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

### § 33.4 Notice requirements before offset.

(a) At least 30 days before the initiation of salary offset under this part, the Secretary shall mail, by first class mail, to the employee's last known address, a written notice informing the debtor of the following:

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(1) The Secretary has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(3) The amount, stated either as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay, the frequency, the commencement date, and the duration of the intended deductions;

(4) An explanation of the Department's policies concerning the assessment of interest, penalties, and administrative costs, stating that such assessments must be made unless waived in accordance with 31 CFR 901.9 and § 30.18 of this title;

(5) The employee's right to inspect and copy all records of the Department pertaining to the debt or, if the employee or the employee's representative cannot personally inspect the records, to request and receive copies of such records;

(6) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset, or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset, provided the agreement is in writing, signed by both the employee and the Department, and documented in the Department's files;

(7) The right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt, or the repayment schedule, so long as a petition is filed by the employee as prescribed in § 33.6;

(8) Time limitations and other procedures or conditions for inspecting Department records pertaining to the debt, establishing an alternative repayment agreement, and requesting a hearing;

(9) The name, address, and telephone number of the person or office within the Department who may be contacted concerning the procedures for inspecting Department records, establishing

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an alternative repayment agreement, and requesting a hearing;

(10) The name and address of the office within the Department to which the petition for a hearing should be sent, which generally will be the Operating Division or Staff Division responsible for collecting the debt;

(11) A timely and properly filed petition for a hearing will stay the commencement of the collection proceeding;

(12) The Department will initiate action to effect salary offset not less than 30 days from the date of mailing the notice of intent, unless the employee properly files a timely petition for a hearing;

(13) A final decision on a hearing, if one is requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceeding;

(14) Knowingly false or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code; part 752 of title 5, Code of Federal Regulations; or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or under any other applicable statutory authority; and

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or under any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice.